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San Francisco



Willie Lewis Brown, Jr.
Mayor

Human Rights Commission

Contract Compliance
Dispute Resolution/Fair Housing
Minority/Women/Local Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Virginia Harmon
Executive Director

Minority/Women/Local Business Enterprise Advisory Committee

TASK FORCE ON 12D-A RULES AND REGULATIONS HEARING

Date	Wednesday, February 28, 2001
Time	5:30 - 7:00 p.m.
	Human Rights Commission 25 Van Ness Avenue, 8 th Floor San Francisco, CA 94102
	Darlene Mar

DOCUMENTS DEPT

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ISSUE BEING CONSIDERED

Enterprise Program ("Program") is governed by San Francisco Administrative Rules and Regulations dated June 8, 2000. The Committee is reviewing Rule 12D.A. which may impact disabled business owners.

REFERENCE BOOK

to be taken from the Library

certification because the business did not meet the "independent office site" Rule VI (3)(i)&(iv). The business owner (and its sole employee) is disabled from commuting from her home office outside of the City to her office within

Americans with Disabilities Act ("ADA") provide that public entities shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 CFR §35.130(b)(7)

In this case, the business owner claims either that (1) her business should be certified as a "reasonable modification" under the ADA even though the business as currently operated does not meet the MBE/WBE/LBE program's requirements, or (2) if the necessary accommodation "fundamentally alters the existing program", that the program should be modified to enable individuals to have their businesses certified where the business owners' disabilities prevent them from meeting the local business requirements set out in 12D.A. and its various Rules.

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2001

25 Van Ness Avenue, Suite 800, San Francisco CA 94102-6033
Tel (415) 252-2500 • Fax (415) 431-5764 • TTY/TDD (415) 252-2550 • <http://www.ci.sf.ca.us/sfhumanrights>
The office location is accessible to and accommodates people with disabilities.





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The Minority, Women, Local Business Enterprise Program ("Program") is governed by San Francisco Administrative Code Chapter 12D.A and HRC 12D.A. Rules and Regulations dated June 8, 2000. The Committee is reviewing Rule VI.(3) (c) and Program requirements as they impact disabled business owners.

ISSUE:

A woman owned business was denied certification because the business did not meet the "independent office site" and "dedicated personnel" requirements of Rule VI (3)(i)&(iv). The business owner (and its sole employee) is disabled and claims that her disability prevents her from commuting from her home office outside of the City to her office within the City.

The Regulations promulgated under the Americans with Disabilities Act ("ADA") provide that "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 CFR §35.130(b)(7)

In this case, the business owner claims either that (1) her business should be certified as a "reasonable modification" under the ADA even though the business as currently operated does not meet the MBE/WBE/LBE program's requirements, or (2) if the necessary accommodation "fundamentally alters the existing program", that the program should be modified to enable individuals to have their businesses certified where the business owners' disabilities prevent them from meeting the local business requirements set out in 12D.A. and its various Rules.



QUESTIONS:

- 1) Would certification of businesses located outside the City, owned by disabled individuals whose disabilities interfere with their ability to commute to a business in the City, "fundamentally alter" the LBE program?
- 2) Should the MBE/WBE/LBE program be expanded to include disabled business owners as a separate category for bid preferences/discounts in the Program? If so, how?
- 3) Are there measures short of recommending a new preference/discount category that would make the MBE/WBE/LBE more accessible to business owners with disabilities?

Action:

The Task Force will make recommendations to the Minority/Women/Local Business Enterprise Advisory Committee at the conclusion of its study, which may be conducted over more than one meeting.

The Task Force on the 12D-A Rules and Regulations welcomes testimony from the public. The Chair of the Task Force may limit individual comments to three minutes per speaker.

Speakers are asked to register when they arrive at the meeting. Any questions about the hearing may be addressed to Maria Cordero at 252-2537.

To submit written testimony, please send it to:

Maria L. Cordero,
HRC, Hearing – disability and LBE requirements
25 Van Ness Avenue, Suite 800
San Francisco, CA 94102.

ABOUT THE COMMITTEE

Minority/Woman/Local-owned Business Enterprise Community Advisory Committee

Co-Chairs:	Commissioners Shirley Dimapilis and Leslie Littleton
Committee Staff:	Romulus Asenloo, Contract Compliance Officer
Current Members:	Laverda Allen, Shala Davoudi, Alan Dones, Mohamed Hijazi, Todd Lewis, Darlene Mar, Jory Steele, James L. Brady.

The MBE/WBE/LBE Community Advisory Committee advises the Commission and its staff on the implementation of the Minority/Women/Local Business Utilization Ordinance (Chapter 12D of the Administrative Code).

VI. CERTIFICATION - LBEs

- 3 The business must be listed in the Permits and License Tax Paid File with San Francisco business street address and possess or be eligible to receive a current Business Tax Registration Certificate at the time of its application for certification as a local business.
 - (a) The applicant for certification must submit a copy of his/her current Business Tax Registration Certificate issued by the City Tax Collector, along with a copy of the application form filed with the San Francisco Tax Collector's Office (EZ) and a copy of the current W-3 form, showing his or her current local business location.
 - (b) Post Office box numbers, commercial mailbox services, or residential addresses when the firm has an office outside of San Francisco shall not suffice to establish status as a 'Local Business'.
 - (c) Businesses with offices both within and outside of the City that seek LBE certification based on an office located within the City must demonstrate the existence of a bona fide local office in accordance with the following criteria:
 - i. Independent Office Site: The local office can and does function as an independent office site. The local office is not merely a sham operation set up by a non-local business for the purpose of gaining LBE certification;
 - ii. Fixtures and Equipment: The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s), software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
 - iii. Space: The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
 - iv. Dedicated Personnel: The local office must be the main office for assigned personnel who conduct a full-range of the business' activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
 - v. Daily Function: The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought;
 - vi. Local Overhead: The overhead costs associated with the local office, including but not limited to rent, wages and salaries, must place the entity seeking certification at an economic disadvantage compared to businesses not located within the City (e.g., a business in the City staffed by a clerk who forwards substantive work to a location outside the City is not considered disadvantaged compared to other businesses not located within the City, and does not meet the criteria for LBE certification);
 - vii. Submission of Records: Businesses seeking certification must submit, in addition to the City Payroll Tax records, a DE-6 quarterly State wage and withholding report. Upon request, the business shall furnish the Director with payroll records for the local office that demonstrate that the tasks described in this section have been performed by employees assigned to and working out of the local office.

American Sign Language interpreters and a FM Amplification System provided upon request with 48 hours advance notice. Accessible parking available at the Civic Center Plaza Garage, the private lot adjacent to the building, and metered parking spaces. The closest accessible BART station is the Civic Center Station. The closest accessible MUNI Metro station is the Van Ness Station. Accessible MUNI lines are 6, 7, 42, 47, 49 and 71 lines. Accessible seating is available for persons with disabilities. Meeting proceedings available in alternative formats. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. To make arrangements or for information, contact Carla Vaughn at 252-2500 (voice) or 415-252-2550 (TTY/TDD).

Know Your Rights under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This Ordinance assures that deliberations are conducted before the people and the City operations are open to the public's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 415-554-6171.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request one from Ms. Hall, or by printing Chapter 67 of the San Francisco Administrative Code on the internet at <http://www.ci.sf.ca.us/sunshine.htm>

ATTENTION: Individuals and entities that influence or attempt to influence legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Administrative Code 16.520-16.534) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #801, San Francisco, CA 94102, telephone 415-554-9510, fax 415-554-8757, and web site <http://www.ci.sf.ca.us/ethics/>.

Policy on cell phone, pagers and electronic devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

